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IN THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

)	
UNITED STATES OF AMERICA,)	
Plaintiff/Appellee,)	
)	Case No. 12-4659
V.)	Case No. 12-4825
)	
AARON GRAHAM, et al.)	
Defendants/Appellants.)	
)	

UNOPPOSED MOTION TO EXCEED LENGTH LIMITATION IN APPELLANTS' OPENING BRIEF

Appellants Aaron Graham and Eric Jordan, jointly through counsel, hereby move this Court to allow them to file an opening brief in excess of the 14,000 words normally permitted under Federal Rule of Appellate Procedure 32(a)(7)(B)(i), and instead file a brief of approximately 28,000 words. In support of this motion, counsel states the following:

1. Aaron Graham and Eric Jordan were charged in a seventeen-count indictment. Both defendants were charged with possessing a firearm after having been convicted of a felony (18 U.S.C. § 922(g)) (Count 1); conspiracy to interfere with commerce by robbery, in violation of the Hobbs Act (18 U.S.C. § 1951(a)) (Count 4); substantive violations of the Hobbs Act (Counts 9, 11, 16); possessing and brandishing a firearm in furtherance of a crime of violence (18 U.S.C. § 924(c)) (Counts 10, 12, 17); and conspiracy to possess firearms in furtherance of crimes of

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violence (18 U.S.C. § 924(o) (Count 13). Graham was charged with two additional Hobbs Act robberies and two more violations of 18 U.S.C. § 924(c)) (Counts 5-8, 14-15). Jordan was charged with an additional violation of 18 U.S.C. § 922(g) and with possessing a sawed-off shotgun. (Counts 2-3).

The defendants filed numerous pre-trial motions to suppress evidence and to sever their trials. The district court denied these motions and they proceed to trial. The court granted Jordan's motion to dismiss Count 1 pursuant to Fed. R. Crim. P. 29(a). After several weeks of trial, the jury convicted both defendants on all remaining counts. The court sentenced Graham to 1,764 months imprisonment and sentenced Jordan to 864 months imprisonment.

- 2. Consistent with its usual practice, this Court has consolidated both Graham's and Jordan's appeal and has ordered them to file a single opening brief.
- 3. The appellants intend to challenge on appeal the government's use of historic cell tower location information that it obtained against the defendants without a warrant. This is an issue of first impression in this Circuit. The district court published a memorandum opinion on the issue that contains 12,742 words. Appellants will have to address all of the district court's reasoning in their opening brief. Responding to this memorandum opinion, as well as including a statement of facts and summary of the argument, would easily engulf all of the initially-allotted

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14,000 words.

4. Other issues on appeal are necessarily defendant-specific. For example, Graham intends to argue on appeal that the defendants should have been severed for trial because they were pursuing mutually antagonistic defenses. There very fact that mutually antagonistic defenses is an issue on appeal means that the defendants are not going to be able to join every argument. Likewise, Jordan intends to argue on appeal that the district court improperly limited his right to testify on his own behalf. This issue is necessarily individual to him and not a joint issue for appeal. Nevertheless, both of those issues raise substantial due process rights that each defendant enjoys personally.

Undersigned counsel understands that the appeal will also contain several other issues that are also personal to a single appellant. Because the appellants must file a single opening brief, they must include all issues, even if relevant only to a single appellant.

5. Counsel for the government, Assistant U.S. Attorney Benjamin Block, does not oppose Appellants' request.

WHEREFORE, the appellants respectfully request that this Court grant the appellants' request and issue an Order permitting them to file an opening brief with 28,000 words.

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Respectfully submitted this 28th day of May, 2013.

JAMES WYDA Federal Public Defender

<u>/s/</u>

Meghan S. Skelton Appellate Attorney 6411 Ivy Lane, Suite 710 Greenbelt, Maryland 20770 Telephone: (301) 344-0600

Facsimile: (301) 344-0019

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CERTIFICATE OF SERVICE

This is to certify that the foregoing Motion was filed via CM/ECF, which automatically sends notice of such filing to:

> Benjamin Block, Esq. Assistant U.S. Attorney Office of the U.S. Attorney 36 South Charles St., 4th Floor Baltimore, Maryland 21201

on this 28th day of May, 2013.

/s/ Meghan S. Skelton Appellate Attorney